IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARNALL GOLDEN GREGORY LLP,	:	
Appellant,	:	
v.	:	
GEMINA ROCHELLE STROUD,	:	CIVIL ACTION NO. 1:18-CV-3755-LMM
Appellee.	:	

ORDER

This case comes before the Court on an Appeal from Orders of the Bankruptcy Court [1]. After due consideration, the Court enters the following Order:

I. BACKGROUND[1]

This appeal arises from an application for an award of attorney's fees in a bankruptcy case filed by Gemina Rochelle Stroud ("Appellee"). On December 18, 2015, Appellee filed a voluntary Chapter 13 petition for bankruptcy and her Chapter 13 plan was confirmed on April 15, 2016. The confirmed plan required

[1] Unless otherwise indicated, the facts relied upon in this Order are taken from the Bankruptcy Court's Order on Application for Final Compensation by Trustee and Attorneys for Trustee and For Allowance of Claim as Administrative Priority. Dkt. No. [1-2].

Appellee to make monthly payments to the Trustee from which the Trustee would make payments to BMW Financial Services ("BMW") and FedEx Employees Credit Union ("FedEx"). The plan also required Appellee to pay the claims of her general unsecured creditors and deferred Appellee's student loan debt until the conclusion of her bankruptcy case.

Approximately one year later, on April 21, 2017, the Chapter 13 Trustee moved to dismiss Appellee's Chapter 13 case for delinquency in plan payments. The issue was resolved with a consent order requiring Appellee to strictly comply with the terms of her plan for twenty-four months. On October 9, 2017, FedEx filed a motion for relief from stay, alleging that Appellee failed to make mortgage payments between June 1, 2017 and September 1, 2017. The FedEx motion represented that Appellee's property was valued at over $105,000, while the unpaid principal of her loan was $51,809.09. The Chapter 13 Trustee moved to convert the case to Chapter 7 so that a Chapter 7 trustee could liquidate the property. On January 22, 2018, Appellee's case was converted to a Chapter 7 case on a "no opposition" basis.

Upon conversion of the case to Chapter 7, Neil Gordon was appointed as the Chapter 7 Trustee ("Trustee"). On February 27, 2018, Trustee filed his application to appoint Arnall Golden Gregory ("Appellant") as his counsel. Trustee stated in his application that he would need counsel to, inter alia, "object[] to any (i) motion to convert Case or (ii) motion to dismiss Case." Dkt.

No. [9] at 13. The Bankruptcy Court appointed Appellant as Trustee's counsel on March 1, 2018.

After the conversion of the case to Chapter 7, BMW moved for relief from the stay to repossesses the vehicle that was to have been paid under the plan. The motion was unopposed and granted on March 2, 2018. Shortly thereafter, Appellee hired new counsel, who indicated that Appellee intended to reconvert her case to Chapter 13 because the initial conversion was based on a mistaken understanding of the amount owed to FedEx. Trustee objected to Appellee's Motion to Reconvert and FedEx's motion for relief from stay. After an initial hearing on April 12, 2018 and an evidentiary hearing on April 26, 2018, the Bankruptcy Court entered an order granting Appellee's motion to reconvert the case to Chapter 13 and reinstituting an automatic stay as to all creditors, including BMW.

On May 18, 2018 Trustee and Appellant filed their fee application (pursuant to 11 U.S.C. §§ 330, 331), seeking $1,716.50 in compensation for Trustee and $13,607.09 plus $31.59 in expenses for Appellant as counsel for Trustee. Dkt. No. [9] at 16. Appellee filed a written objection to the fee application, arguing that Trustee failed to demonstrate a nexus between his efforts and the uncovering of assets. Dkt. No. [4-11] ¶ 18. On June 13, 2018, the Bankruptcy Court held a hearing on the fee application. There, Appellee stated that she also opposed the attorney's fees sought by Appellant. Dkt. No. [4-13] at 13. Following the hearing, the Bankruptcy Court entered an order awarding

Appellant $7,000 plus the requested expenses. The Bankruptcy Court explained that it reduced Appellant's attorneys' fee request because (1) only $10,000 of the requested $13,607.09 was attributable to legal services; and, (2) of that $10,000, approximately $6,000 was spent on opposing the motion to reconvert but only $3,000 of that $6,000 was for actual and necessary services.

Appellant now appeals the Bankruptcy Court's decision, arguing first that the Bankruptcy Court denied it due process in allowing Appellee to object to Appellant's fee application at the June 13 hearing without filing prior written objections. Dkt. No. [9] at 21. Appellant further contends that the Bankruptcy Court denied Appellant due process when it determined that some of the time Appellant spent was not for "legal services" because neither Appellee nor the Bankruptcy Court raised the specific issue at the June 13 hearing. Id. Finally, Appellant asks the Court to reverse the Bankruptcy Court's reduction of fees for Appellant's services rendered in connection with opposing the motion to reconvert.

II. LEGAL STANDARD

In an appeal of a Bankruptcy Court decision, the district court sits as an appellate court of review. In re Nica Holdings, Inc., 810 F.3d 781, 785–86 (11th Cir. 2015). In its appellate capacity, a district court may "affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings." Fed. R. Bankr. P. 8013. A district court

reviews the Bankruptcy Court's factual findings for clear error and its legal conclusions *de novo*. In re Nica Holdings, Inc., 810 F.3d at 786.

Pursuant to 11 U.S.C. § 330 (a)(1)(A), a bankruptcy court *may* award trustees and their attorneys "reasonable compensation for actual, necessary services rendered." (emphasis added). On appeal, "an award of attorneys' fees in a bankruptcy proceeding will be reversed only if the court abused its discretion." In re Red Carpet Corp. of Panama City Beach, 902 F.2d 883, 890 (11th Cir. 1990). "An abuse of discretion occurs if the judge fails to apply the proper legal standard or to follow proper procedures in making the determination, or bases an award upon findings of fact that are clearly erroneous." Id.

With regards to Appellant's due process allegations, a district court reviews "constitutional challenges, including alleged due process violations, de novo." Franken v. Mukamal, 449 F. App'x 776, 779 (11th Cir. 2011) (internal citation omitted).

III. DISCUSSION

As a preliminary matter, Appellant contends that all of the Bankruptcy Court's rulings are legal rulings and therefore subject to *de novo* review. See Dkt. No. [9] at 10. The Court disagrees. While the Bankruptcy Court's alleged due process violations are reviewed *de novo*, its findings as to whether Appellant's fees spent opposing the Motion to Reconvert were for actual and necessary services were directly tied to "an evaluation of the particular facts of this case." In re Hillsborough Holdings. Corp., 127 F.3d 1398, 1402 (11th Cir. 1997). Unlike in

In re Hillsborough—on which Appellant heavily relies—the Bankruptcy Court's ruling was not based on a general interpretation of a phrase applied uniformly in all cases, but was grounded in a specific analysis of Trustee's and Appellant's actions. See id. Accordingly, the Court will first review Appellant's alleged due process violations *de novo*. The Court will then review Appellant's objections to the Bankruptcy's Court's decision to reduce Appellant's fees for services rendered in connection with opposing the motion to reconvert under the abuse of discretion standard.

a. Due Process

Appellant first contends that it was denied due process when the Bankruptcy Court permitted Appellee's counsel to object to Appellant's fee application at the hearing without having filed prior written objections. Dkt. No. [9] at 21. The Court does not find this argument persuasive because "[c]ase law firmly establishes that the bankruptcy court has an affirmative obligation to evaluate the reasonableness of compensation to professional persons independent of any objection by a party in interest." Matter of Ross, 88 B.R. 471, 474 (Bankr. M.D. Ga. 1988) *abrogated on other grounds by* Unsecured Creditors Comm. v. Webb & Daniel, 204 B.R. 830 (Bankr. M.D. Ga. 1997); see also In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 843 (3d Cir. 1994) ("[B]ankruptcy courts have an independent duty to review fee applications even absent objections . . . "). Accordingly, in permitting Appellee to proceed with its

objections to Appellant's fee application at the hearing, the Bankruptcy Court did not deny Appellant due process.

Appellant next argues that the Bankruptcy Court's failure to allow it an opportunity to be heard on the issue of whether specific time entries in its fee application were more properly categorized as trustee services, rather than legal services, resulted in a denial of due process. Dkt. No. [9] at 9.[2] To support of its due process claim, Appellant relies heavily on In Re Busy Beaver, in which the Third Circuit recognized that where a "bankruptcy court plans to disallow certain items of compensation, § 330(a) on its face first contemplates the applicant's right to a hearing." 19 F.3d at 845. The court further explained:

> [I]f the [bankruptcy] court does disallow fees of a 'good-faith applicant,' the Code, *see* §329(b), 330(a) . . . and perhaps even the dictates of due process, *see* U.S. CONST. amend. V.-mandates that the court allow the fee applicant an opportunity, should it be requested, to present evidence or argument that the fee application meets the prerequisites for compensation; canons of fairness militate against forfeiture of the requested fees simply because the court's audit of the application uncovers some ambiguity or objection.

Id. at 846.

The Court finds the Third Circuit's reasoning persuasive as applied to the facts of this case. Here, the Bankruptcy Court did not confront Appellant with its

---

[2] AGG also argues that Appellee's failure to raise this issue in her response or at the hearing constitutes a due process violation. Dkt. No. [9] at 2. However, as discussed *supra*, the Court is not persuaded that Appellee's failure to object to the specifics of AGG's fee application necessarily denied AGG due process. Cf. In re Busy Beaver, 19 F.3d at 843-44.

concerns about whether portions of its fee request were for trustee services either before or at the hearing. Indeed, the Bankruptcy Court declined Trustee's offer to address any questions the Bankruptcy Court might have harbored about specific time entries in the fee application at the hearing, switching to questions about the status of the Chapter 13 case. See Dkt. No. [4-13] at 29. Thus, Appellant first learned of the Bankruptcy Court's concerns after its fee request for legal services rendered was reduced by $3,575.50.[3] The Court is cognizant of the well-established principle that "[t]he burden is on the attorney claiming a fee in a bankruptcy proceeding to establish the value of his services." In re Beverly Mfg. Corp., 841 F.2d 365, 371 (11th Cir. 1988) (quoting Matter of U.S. Golf Corp., 639 F.2d 1197, 1201 (5th Cir. Mar. 1981)). But where, as here, an attorney lacks notice of issues with his fee application until *after*[4] the application's denial, the Court cannot say the attorney had a fair opportunity to meet his burden. See In re Busy Beaver, 19 F.3d at 847 ("Unless the applicant is afforded an opportunity to rebut

---

[3] Had the Bankruptcy Court addressed its concerns with specific time entries at the hearing, Appellant contends that Trustee—a nationally recognized authority on the issue—would have made "a compelling witness" on its behalf. Dkt. No. [9] at 20 n.4.

[4] Appellee argues that under In re Busy Beaver, AGG is only entitled to an opportunity to present evidence "should it be requested." Dkt. No. [10] at 8. In Appellee's view, then, Appellant's failure to request an opportunity to present evidence after a portion of its fee application was denied is fatal to its due process claim. See id. The Court disagrees. While Appellant could have filed a motion for reconsideration with the bankruptcy court—and perhaps would have better served the principles of judicial efficiency and economy in doing so—Appellant was not *required* to do so before filing this appeal.

or contest the [bankruptcy] court's conclusions, the applicant would unfairly and undesirably be deprived of the chance to respond to and assuage the court's questions and concerns.").

This case is also distinguishable from Matter of U.S. Golf Corp., in which the Fifth Circuit[5] confronted a similar situation. 639 F.2d at 1207. There, the attorney seeking fees claimed that the bankruptcy judge abused his discretion by disallowing particular hours without giving him an opportunity to respond to the judge's specific objections. See id. The court concluded that although "the better practice would have been for the judge to confront the attorney with at least his general objections to the attorney's claimed hours . . . failure to follow this practice is not an adequate ground for reversal." Id. Important to the court's decision was the fact that the attorney had been afforded an evidentiary hearing at which he testified as to the reasonableness of the compensable time he claimed. Id. 1207-1208. Thus, because the attorney had an adequate opportunity to justify his fee request, the court found that the judge did not abuse his discretion in failing to raise his specific objections at the evidentiary hearing. See id. at 1207-1208; see also In re Beverly Mfg. Corp., 841 F.2d at 370 (recognizing that "[i]f there are disputed issues of facts, an evidentiary hearing must be held to facilitate their resolution.") (emphasis in original) (internal quotation omitted).

---

[5] The Eleventh Circuit has adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

Here, unlike in Matter of U.S. Golf Corp., the issue is not whether the Bankruptcy Judge's objections were specific enough—rather, Appellant was unaware of any issues with its fee application. See Dkt. No. [11] at 8. Moreover, given that the transcript reveals no substantial discussion of Appellant's fee application in any way, the Court cannot say that Appellant was truly afforded a proper hearing on its fee application. Thus, the Court concludes that the proper course of action is to remand this issue to the Bankruptcy Court to permit Appellant the opportunity to establish that the disputed $3,575.50 in fees is attributable to legal services.

With this remand, the Court does not mean to imply that the Bankruptcy Court's determination that a number of Appellant's entries were "more in the nature of trustee services than legal services" was necessarily in error. Dkt. No. [1-2] at 9. The Court recognizes that the Bankruptcy Court is entitled to considerable discretion over the amounts awarded by ways of fees and expenses. However, the Court is also cognizant that both the language of § 330(a) and principles of due process require that Appellant be afforded an opportunity to be heard as to the Bankruptcy Court's concerns.

b. Motion to Reconvert

Appellant next argues that the Bankruptcy Court "arbitrarily" cut in half its fee request for services relating to Trustee's opposition to the Motion to Reconvert. Dkt. No. [9] at 24. Specifically, Appellant contends that the Bankruptcy Court erred in questioning the amount of time spent opposing the

reconversion because Trustee had a duty to Appellee's unsecured creditors. See id. at 26; see also Dkt. No. [11] at 15. But Appellant's disagreement with the wisdom of the Bankruptcy Court's decision does not rise to the level of an abuse of discretion. As discussed *supra*, bankruptcy courts have a "broad discretionary grant" in awarding attorney fees. In re Hillsborough Holdings Corp., 127 F.3d at 1404. Here, the Bankruptcy Judge provided a reasoned explanation as to why she determined that not all $6,000 in fees spent opposing the Motion to Reconvert were actual and necessary. See Dkt. No. [1-2] at 10 ("[T]he Debtor's Chapter 13 plan was current at the time of conversion, her plan proposed to pay all of her unsecured creditors . . . so the Court questions why the Trustee needed to be the one to incur so much time and legal expense opposing the motion."). Moreover, Appellant does not contend—nor does the transcript indicate—that the Bankruptcy Judge failed to discuss this issue at the June 13 hearing. On this record, the Court does not find that the Bankruptcy Court's reduction in fees for efforts spent opposing the reconversion are clearly erroneous.

Additionally, the Court finds no merit in Appellant's assertion that the Bankruptcy Court approved Appellant's fees when it approved Trustee's application to employ Appellant as counsel in its efforts to oppose reconversion. See Dkt. No. [9] at 25. Such an argument is at odds with the plain language of § 330(a), which indicates that in awarding attorneys' fees for "actual, necessary services," a bankruptcy court "*shall* consider the nature, the extent, and the value of such services . . . ." 11 U.S.C. § 330(a) (emphasis added). Appellant offers no

authority for the proposition that when a bankruptcy court approves a trustee's application for legal counsel, it also cedes its duty to determine whether all services rendered were actual and necessary. See In Re Busy Beaver, 19 F.3d at 843 ("[B]ankruptcy courts have an independent duty to review fee applications . . . ."). Indeed, a grant of carte blanche authority to a trustee's legal counsel to accrue as many fees as they may deem necessary is irreconcilable with the "strong policy of the Bankruptcy Act that estates be administered as efficiently as possible . . . ." Matter of First Colonial Corp. of Am., 544 F.2d 1291, 1299 (5th Cir. 1977). Thus, the Court will not disturb the Bankruptcy Court's decision to reduce Appellant's request for fees in connection to its efforts spent opposing reconversion.

IV. CONCLUSION

The Order of the Bankruptcy Court [1] is **AFFIRMED IN PART and REVERSED IN PART.** This case is **REMANDED** to the Bankruptcy Court, and the Bankruptcy Court is **DIRECTED** to permit Appellant an opportunity to respond to the Bankruptcy Court's concerns as to whether Appellant is entitled to an additional $3,575.50 in fees for legal, rather than trustee, services.

IT IS SO ORDERED this 28th day of January, 2019.

Leigh Martin May
United States District Judge